

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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STEVEN B. BARGER,

Plaintiff,

-against-

MEMORANDUM AND ORDER

1:17-cv-04869(FB)(LB)

FIRST DATA CORPORATION, FRANK
BISIGNANO, DAN CHARRON,
ANTHONY MARINO, KAREN
WHALEN, and RHONDA JACKSON,

Defendants.

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Appearances:

For the Plaintiff

DAVID A ZEITLIN
Zeitlin & Zeitlin, P.C.
50 Court St., Ste. 506
Brooklyn, NY 11201

SHAWN SHEARER
The Law Office of Shawn Shearer, P.C.
3869 Mckinney Ave.
Dallas, TX 75204

For the Defendant

GARY B. EIDELMAN
GILLIAN ASHLEY COOPER
LINDSEY CONRAD KENNEDY
Saul Ewing LLP
500 E Pratt St.
Baltimore, MD 21202

BLOCK, Senior District Judge:

Plaintiff Steven Barger brings a claim for violation of the Family and Medical Leave Act (“FMLA”), alleging he was improperly fired after taking FMLA leave. He moves for judgment on the pleadings under Federal Rule of Civil Procedure 12(c). He argues that defendants have admitted to sufficient facts to warrant an entry of judgment in his favor. Barger’s motion is denied.

The Court cannot grant relief on a Rule 12(c) motion where there are disputes of material facts. *Sellers v. M.C. Floor Crafters, Inc.*, 842 F.2d 639, 642 (2d Cir. 1988). The Court “must ‘view the pleadings in the light most favorable to, and draw all reasonable inferences in favor of, the non-moving party.’” *Davidson v. Flynn*, 32 F.3d 27, 29 (2d Cir. 1994) (citing *Madonna v. United States*, 878 F.2d 62, 65 (2d Cir. 1989)). Defendants have contested virtually every material fact in plaintiff’s complaint and plead twenty affirmative defenses. In particular, defendants argue that several defendants were not Barger’s employers, that his FMLA leave expired before he sought to return to work, that he was properly reinstated before he was terminated, that they have a valid reduction of force (“RIF”) defense, and that his damages claims are overstated. These disputes of material fact preclude judgment on the pleadings.

Defendants move pursuant to Federal Rule of Civil Procedure 11 for a hearing as to why they should not be awarded attorneys’ fees and costs on the basis that Barger’s motion was filed for an improper purpose. The Court denies this motion for now but cautions Barger to consider the merits of any future motion before filing.

SO ORDERED

/s/ Frederic Block
FREDERIC BLOCK
Senior United States District Judge

Brooklyn, New York
July 23, 2018